

SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

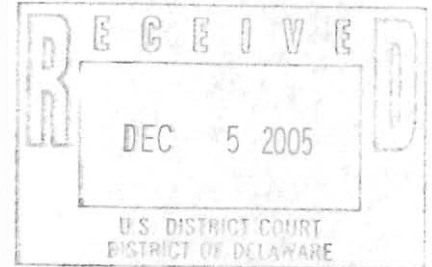
Page 6

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963

AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		PLEAS FILE A COPY OF JUDGE COOCH'S 091898 SENTENCING ORDER TO BE ATTACHED TO THE NOTIC OF APPEAL UPON YOUR REQUEST.	
61	09/25/1998	LETTER FROM (SUPREME COURT) TO COURT REPORTER PURSUANT TO SUPREME COURT RULE 9(E)(IV), THE TRANSCRIPT MUST BE FILED WITH THE PROTHONOTARY NO LATER THAN 110498.	
62	09/28/1998	MOTION FOR MODIFICATION OF SENTENCE FILED. RETURNED TO DEFT. - NOT SERVED ON A.G.	
64	11/06/1998	LETTER FROM (SUPREME COURT) TO COURT REPORTER THE COURT HAS DIRECTED ME TO INFORM YOU THAT YOUR REQUEST IS GRANTED. THE TRANSCRIPT MUST BE FILED NO LATER THAN 120498.	
65	11/17/1998	DEFENDANT'S LETTER FILED. RE: ATTORNEY J. DALLAS WINSLOW TO ENTER AN APPEAL ON DEFENDANT'S BEHALF	
66	11/25/1998	TRANSCRIPT OF SENTENCING FILED. SEPT. 18, 1998	COOCH RICHARD R.
67	12/09/1998	LETTER FROM (SUPREME COURT) TO COURT REPORTER THE COURT HAS DIRECTED ME TO INFORM YOU THAT YOUR REQUEST IS GRANTED. THE TRANSCRIPT MUST BE FILED NO LATER THAN 010499,	
71	12/15/1998	DEFENDANT'S LETTER FILED.	
68	01/04/1999	TRANSCRIPT OF TRIAL FILED. APR. 29, 30, 1998	COOCH RICHARD R.
69	01/04/1999	TRANSCRIPT OF TRIAL FILED. APRIL 28, 1998	COOCH RICHARD R.
70	01/11/1999	RECORDS SENT TO SUPREME COURT.	
72	01/11/1999	LETTER FROM (SUPREME COURT) TO PROTHONOTARY PURSUANT TO SUPREME COURT RULE 9(B)(I), THE RECORD AND TRANSCRIPT MUST BE FILED WITH THIS OFFICE NO LATER THAN 011499.	
73	01/15/1999		



SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 7

State of Delaware v. KEVIN L WASHINGTON DOB: 02/21/1963  
 State's Atty: ROBERT M GOFF , Esq. AKA: KEVIN WASHINGTON  
 Defense Atty: JOSEPH A GABAY , Esq. KEVIN WASHINGTON

No.	Event Date	Event	Judge
		RECEIPT OF RECORDS ACKNOWLEDGED BY SUPREME COURT	
74	02/04/1999	DEFENDANT'S LETTER FILED. (COPY OF LETTER DEFENDANT SENT TO DALLAS WINSLOW).	
76	03/12/1999	DEFENDANT'S MOTION FILED (RE: INEFFECTIVE COUNSEL) RE: COPY OF DEFENDANTS' MOTION TO J DALLAS WINSLOW	
75	03/31/1999	RECORDS SENT TO SUPREME COURT. (TRANSCRIPT)	
77	05/07/1999	CONFLICT LETTER FILED BY GAYLE LAFFERTY	
78	05/12/1999	ORDER: APPOINTMENT OF COUNSEL; JOSEPH A. GABAY, ESQ. TO REPRESENT DEFENDANT.	BARRON NORMAN A. APPOINTED
79	07/20/1999	MOTION FOR POSTCONVICTION RELIEF FILED. PRO SE REFERRED TO JUDE COOCH REFERRED ON 7/26/99.	
80	07/26/1999	LETTER FROM ANGELA HAIRSTON TO M.JANE BRADY RE: NOTIFICATION OF FILING OF A PRO SE MOTION FOR POSTCONVICTION RELIEF. TO BE ASSIGNED TO A DAG.	
81	08/20/1999	MOTION FOR POSTCONVICTION RELIEF DENIED. THE COURT IS IN RECEIPT OF YOUR MOTION FOR POSTCONVICTION RELIEF FILED WITH THE PROTHONOTARY ON JULY 20, 1999. ON PAGE 2 OF YOUR MOTION, YOU STATE THAT YOU DID APPEAL THIS CASE TO THE SUPREME COURT AND THAT THE SUPREME COURT'S FINAL ORDER OR JUDGEMENT WAS APRIL 7, 1999. BY SUPREME COURT ORDER DATED MAY 6, 1999, THAT COURT ORDERED THAT JOSEPH GABAY, ESQ BE APPOINTED AS SUBSTITUTE COUNSEL AND THAT HE FILE AN OPENING BRIEF IN SUPPORT OF YOUR APPEAL WITHIN 30 DAYS OF THAT ORDER. UPON VERIFICATION WITH THE SUPREME COURT, I WAS ADVISED THAT MR GABAY'S OPENING BRIEF IS DUE TO BE FILED ON AUGUST 26, 1999 AND THAT THE APPEAL IS CURRENTLY PENDING BEFORE THE SUPREME COURT. ACCORDINGLY, BECAUSE THE SUPERIOR COURT DOES NOT HAVE JURISDICTION OVER THIS CASE BECAUSE IT IS ON APPEAL BEFORE THE SUPREME COURT, YOUR MOTION FOR POSTCONVICTION RELIEF IS HEREBY DENIED. IT IS SO ORDERED.	COOCH RICHARD R.
82	08/31/1999	DEFENDANT'S LETTER FILED.	

SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 8

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963  
 AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		ASKING THE HELP OF HIS ATTORNEY FOR GETTING A COPY OF AN OPENING BRIEF OF THE CASE ON APPEAL.	
83	03/24/2000	RECEIPT OF RECORD AND MANDATE RETURNED FROM SUPREME COURT ON THE ABOVE APPEAL. (CASE CLOSED) #421, 1999	
84	03/24/2000	MANDATE FILED FROM SUPREME COURT - AFFIRMED. OUR REJECTION OF APPELLANT'S PLAIN ERROR CLAIMS IN THIS APPEAL DOES NOT PRECLUDE THE LATER ASSERTION OF AN INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM UNDER SUPERIOR COURT CRIMINAL RULE 61. NOW, THEREFORE, IT IS ORDERED THAT THE JUDGEMENT OF THE SUPERIOR COURT BE, AND THE SAME HEREBY IS, AFFIRMED.	
85	09/05/2000	MOTION TO ACCESS THE EVIDENCE FOR PURPOSES OF DNA TESTING FILED. PRO SE - REFERRED TO JUDGE COOCH.	
86	10/13/2000	STATE'S RESPONSE FILED. MOTION FOR ACCESS TO EVIDENCE FOR DNA TESTING. PAUL WALLACE, DAG. REFERRED TO JUDGE COOCH.	
87	11/15/2000	ORDER: MOTION TO ACCESS THE EVIDENCE FOR PURPOSES OF DNA TEST - DENIED SEE ORDER FOR VARIOUS REASONS.	COOCH RICHARD R.
88	09/17/2001	MOTION FOR POSTCONVICTION RELIEF FILED. PRO SE REFERRED TO JUDGE COOCH.	
89	09/17/2001	LETTER FROM ANGELA HAIRSTON, PROTHONOTARY TO STEVEN WOOD, DAG RE: NOTICE OF PRO SE FILING OF MOTION FOR POSTCONVICTION RELIEF. ORIGINAL DEPUTY ATTORNEY GENERAL NO LONGER WITH THE DEPT. OF JUSTICE.	
90	10/18/2001	ORDER: THIS 17TH DAY OF OCTOBER, 2001, THE DEFENDANT HAVING FLED A PRO SE MOTION FOR POSTCONVICTION RELIEF PURSUANT TO SUPERIOR COURT CRIMINAL RULE 61 ON SEPTEMBER 17, 2001 AND RECEIVED IN CHAMBERS ON OR AFTER OCTOBER 6, 2001. IT IS ORDERED THAT: 1) DEFENDANT'S PRIOR TRIAL COUNSEL, J. DALLAS WINSLOW, JR., ESQUIRE, SHALL FILE AN AFFIDAVIT RESPONDING TO GROUND 1, 4, AND 5 WHICH CLAIM INEFFECTIVE ASSISTANCE OF COUNSEL, ON OR BEFORE NOVEMBER 30, 2001 SERVING THE AFFIDAVIT ON THE STATE AND ON THE DEFENDANT; 2) THE DATE SHALL FILE A LEGAL MEMEORANDUM IN RESPONSE TO DEFENDANT'S MOTION, ADDRESSING ALL GROUNDS SET FORTH IN THE MOTION	COOCH RICHARD R.



SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 9

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963  
 AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		AND TRIAL COUNSEL'S RESPONSE, ON OR BEFORE JANUARY 11, 20002, SERVING THE RESPONSE ON MR. WINSLOW AND DEFENDANT. 3) A REPLY BY MR WASHINGTON TO THE ABOVE AFFIDAVIT OF PRIOR TRIAL COUNSEL AND TO THE STATE'S RESPONSE SHALL BE FILED WITH THE PROTHONOTARY BY FEBRUARY 13, 2002.	
91	11/28/2001	MOTION FOR TRANSCRIPTS (PRO SE) FILED. REFERRED TO JUDGE COOCH	
92	12/11/2001	LETTER/ORDER ISSUED BY JUDGE: COOCH. MOTION FOR TRANSCRIPTS. RE:I AM IN RECEIPT OF YOUR NOVEMBER 28 2001 MOTION FOR TRANSCRIPTS IN THE ABOVE CAPTIONED CASE IN WHICH YOU REQUEST TRANSCRIPTS OF THE GRAND JURY MINUTES TO DETERMINE IF YOU WERE IN FACT INDICTED BY THE CO CONCURRENCE OF THE REQUISTE NUMBER OF JURORS [IN] ACCORDANCE WITH 10 DEL.C.SEC.4505, NUMBER OF JURORS TWELVE(12). AS GROUNDS FOR THE ABOVE MOTION YOU ARE ARGUE THAT YOU ARE AN INDIGENT PERSON AND THAT YOU HAVE A CONSTITUTIONAL RIGHT TO FREE TRANSCRIPTS. THERE IS NO CONSTITUTIONAL RIGHT TO THE PROVISION OF A FREE TRANSCRIPT FOR THE PREPARATION OF A POST-TRIAL MOTION. YOUR MOTION IS DENIED BECAUSE IT FAILS TO SHOW EITHER THAT THERE IS SOME LEGAL OR FACTUAL BASIS FOR RELIEF AND THAT T THERE IS A PARTICULARIZED NEED FOR THE TRANSCRIPTS, SEE BRATCHER V STATE, DEL. SUPR., NO.33`, 1998 VEASEY, C.J. (NOV.10, 1998) ORDER. IT IS SO ORDERED.	COOCH RICHARD R.
93	12/12/2001	AFFIDAVIT OF PRIOR COUNSEL J.DALLAS, WINSLOW, ESQ IN REFERENCE TO DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF.	
95	12/12/2001	AFFIDAVIT OF PRIOR DEFENSE COUNSEL -RE: RULE 61. REFERRED TO JUDGE COOCH.	
94	12/14/2001	SCHEDULING ORDER. ( REVISED) NOW THIS 14TH DAY OF DECEMBER, 2001: 1) DEFENDANT'S PRIOR TRIAL COUNSEL, J.DALLAS WINSLOW, JR., ESQ HAS FILED AN AFFIDAVIT RESPONDING TO DEFENDANT'S PRO SE MOTION FOR POSTCONVICTION RELIEF. 2) THE STATE SHALL IFLE ITS RESPONSE TO DEFENDANT'S MOTION ADDRESSING THE FACTUAL AND LEGAL ASSIERTIONS IN THE MOTION AND THE AFFIDAVIT OF MR. WINSLOW SERVING THAT RESPONSE TO ALL PARTIES ON OR BEFORE JANUARY 28, 2002. 3) ANY REPLY BY THE MOVANT TO THE STATE'S RESPONSE AND TO THE AFFIDAVIT OF MR. WINSLOW SHALL BE FILED ON OR BEFORE 2/28/02. IT IS SO ORDERED.	COOCH RICHARD R.
97	01/25/2002		

SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 10

State of Delaware v. KEVIN L WASHINGTON DOB: 02/21/1963  
 State's Atty: ROBERT M GOFF , Esq. AKA: KEVIN WASHINGTON  
 Defense Atty: JOSEPH A GABAY , Esq. KEVIN WASHINGTON

No.	Event Date	Event	Judge
		MOTION TO AMEND POSTCONVICTION RELIEF (PRO SE) REFERRED TO JUDGE COOCH.	FILED.
96	01/28/2002	STATE'S RESPONSE TO DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF.	
98	02/08/2002	LETTER FROM JUDGE COOCH TO MR. VEITH AND MR. WASHINGTON DATED 02062002 I AM IN RECEIPT OF DEFT'S "MOTION TO AMEND POSTCONVICTION RELIEF" FILED JAN 25. 2002. THIS MOTION TO AMEND WAS FILED 3 DAYS BEFORE THE FILING OF THE STATE'S RESPONSE ON 1/28/02. ALTHOUGH THE MOTION TO AMEND IS DEVOID OF ANY FACTS OR LEGAL AUTHORITY IN SUPPORT OF ALLOWING AMENDMENT TO THE PENDING POSTCONVICTION RELIEF SHALL BE FILED ON OR BEFORE 2/22/02. NO FURTHER EXTENSIONS WILL BE PERMITTED. A FURTHER RESPONSE/REPLY SCHEDULE WILL BE ORDERED BY THE COURT UPON RECEIPT AND REVIEW OF THAT AMENDED PETITION. IT IS SO ORDERED.	COOCH RICHARD R.
99	02/22/2002	AMENDED MEMORANDUM OF LAW IN SUPPORT OF RULE 61. REFERRED TO JUDGE COOCH.	
100	04/29/2002	ORDER: DEFENDANT'S PRO SE MOTION FOR POSTCONVICTION RELIEF IS DENIED.	COOCH RICHARD R.
101	06/05/2002	LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY RE: A NOTICE OF APPEAL WAS FILED IN THIS COURT ON JUNE 4, 2002. THE RECORD MUST BE FILED WITH THIS OFFICE NO LATER THAN JULY 19, 2002. 315, 2002.	
102	06/06/2002	LETTER FROM SUPREME COURT TO KEVIN WASHINGTON RE: YOU ARE DIRECTED TO SHOW CAUSE WHY THIS APPEAL SHOULD NOT BE DISMISSED. FOR FAILURE TO FILE YOUR NOTICE OF APPEAL WITHIN 30 DAYS AFTER ENTRY UPON THE DOCKET OF THE ORDER FROM WHICH THE APPEAL IS TAKEN AS REQUIRED BY SUPREME COURT RULE 6. REPOND IN WRITING TO THIS NOTICE TO SHOW CAUSE WITHIN 10 DAYS AFTER YOU RECEIVE IT.	
103	07/11/2002	RECEIPT FROM SUPREME COURT ACKNOWLEDGING THE RECORD.	
104	07/29/2002	MANDATE FILED FROM SUPREME COURT: APPEAL DISMISSED. SUPREME COURT CASE NO: 315, 2002 SUBMITTED: JUNE 20, 2002 DECIDED: JULY 9, 2002 BEFORE VEASEY, CHIEF JUSTICE, WALSH AND STEELE, JUSTICES.	
105	10/09/2002	MOTION FOR POSTCONVICTION RELIEF FILED, PRO SE	

SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 11

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963  
 AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		REFERRED TO JUDGE COOCH.	
106	10/10/2002	LETTER FROM ANGELA HAIRSTON, PROTHONOTARY OFFC TO STEVEN WOOD, DAG RE: NOTICE OF FILING OF PRO SE MOTION FOR POSTCONVICTION RELIEF. ATTACHED COPY OF MOTION.	
107	10/30/2002	MOTION TO AMEND PENDING MEMORANDUM OF LAW FOR RULE 61 FILED. PRO SE REFERRED TO JUDGE COOCH.	
108	11/18/2002	COOCH RICHARD R. ORDER: PRO SE MOTION FOR POSTCONVICTION RELIEF: DEFENDANT'S PRIOR COUNSEL SHALL FILE AN AFFIDAVIT RESPONDING THE FACTUAL ALLEGATIONS IN GROUNDS 1 OF THE MOTION 9ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL) ON OR BEFORE DEC.16,2002.SERVING THE AFFIDAVIT ON THE STATE AND ON THE MOVANT. 2) THE STATE SHALL FILE A RESPONSE TO DEFENDANT'S MOTION ADDRESSING GROUND 1 OF THE MOTION, THE FACTUAL AND LEGAL ASSERTIONS IN DEFENDANT'S MOTION AND IN THE AFFIDAVIT OF PRIOR COUNSEL ON OR BEFORE JAN. 15, 2003. SERVING THE RESPONSE ON PRIOR COUNSEL AND ON THE MOVANT. 3) ANY REPLY BY THE MOVANT TO THE STATES RESPONSE SHALL BE FILED ON OR BEFORE FEB 10, 2003.	
109	02/04/2003	MOTION FOR DEFAULT OF JUDGEMENT (PRO SE) FILED. REFERRED TO JUDGE COOCH.	
110	02/12/2003	COOCH RICHARD R. LETTER FROM JUDGE COOCH TO J.DALLAS WINSLOW, JR. ESQ. RE: RULE 61 PLEASE FILE THE REQUESTED AFFIDAVIT ON OR BEFORE FEB. 21, 2003.	
111	02/25/2003	DEFENDANT'S LETTER FILED. RE: PENDING AFFIDAVITS HAVE NOT BEEN RECEIVED IN REFERTENCE TO DEFENDANT'S MOTION FOR POSTCONVICTION. REFERRED TO JUDGE COOCH	
112	02/28/2003	EMAIL FILED TO: JUDGE COOCH. FROM: DALLAS WINSLOW. RE: YOUR SECRETARY SENT NOTICE OF KEVIN WASHINGTON'S MATTER TO 803 SHIPLEY STREET RATHER THAN HERE. I HAVE NOT BEEN PRACTICING AT 803 SHIPLEY ST. UNTIL RECENTLY. I APOLOGIZ FOR NOT HAVING THE AFFADAVIT ACCOMPLISHED. I'M LEAVING FOR MAINE TOMORROW FOR A WEEK. I WILL TRY TO ACCOMPLISH AFFIDAVIT BEFORE I LEAVE OR IMMEDIATELY UPON MY RETURN.	
113	03/14/2003	DEFENSE ATTY'S AFFIDAVIT IN RESPONSE TO RULE 61 MOTION.	
114	03/25/2003	COOCH RICHARD R. ORDER: RULE 61. 1. THE STATE SHALL FILE A RESPONSE TO MR. WINSLOW AFFIDAVIT AND TO THE FACTUAL AND LEGAL ASSERTIONS IN DEFENDANT'S	

SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 12

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963  
 AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		MOTION ON OR BEFORE APRIL 21, 2003, SERVING THE RESPONSE ON MR. WINSLOW AND ON MOVANT. 2. ANY REPLY BY THE MOVANT TO THE STATE'S RESPONSE AND TO MR. WINSLOW'S AFFIDAVIT SHALL BE FILED ON OR BEFORE MAY 21, 2003. A COPY OF THE AFFIDAVIT OF L.DALLAS WINSLOW, JR. DATED MARCH 13, 2002 IS ATTACHED FOR THE STATE AND FOR THE MOVANT.	
115	03/31/2003		COOCH RICHARD R.
		MOTION FOR TRANSCRIPT FILED PRO SE. REFERRED TO JUDGE COOCH.	
118	04/17/2003		
		EMAIL FILED FROM RRC TO COUNSEL RE: STATE REQUESTING FOR EXTENSION OF TIME TO FILE RESPONSE **GRANTED	
119	04/21/2003		
		EMAIL FILED FROM RRC TO COUNSEL. RE: RULE 61	
117	05/01/2003		COOCH RICHARD R.
		LETTER/ORDER ISSUED BY JUDGE: COOCH. RE: MOTION FOR TRANSCRIPTS.DENIED RE:	
116	05/05/2003		
		STATE'S RESPONSE TO DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF. FILED PRO SE	
120	07/30/2003		COOCH RICHARD R.
		ORDER: ON DEFENDANT'S SECOND PRO SE MOTION FOR POSTCONVICTION RELIEF. DENIED IN PART, SUMMARILY DISMISSED IN PART. IT IS ORDERED. MOTION FOR DEFAULT JUDGEMENT I DENIED AS MOOT.	
121	10/08/2004		
		MOTION FOR TRANSCRIPT FILED PRO SE. REFERRED TO JUDGE COOCH	
122	10/18/2004		COOCH RICHARD R.
		NOTICE OF NON-COMPLIANCE TO RULE 61 (MOTION FOR POSTCONVICTION RELIEF) SENT TO DEFENDANT. DEFENDANT'S MOTION FOR PRODUCTION OF THE GRAND JURY MUINUTES IS IN EFFECT A MOTION FOR POSTCONVICTION RELIEF. YOU MUST USE THE ATTACHED FORM.	
123	10/29/2004		
		MOTION FOR POSTCONVICTION RELIEF FILED. PRO SE REFERRED TO JUDGE COOCH.	
124	11/03/2004		
		LETTER FROM A. HAIRSTON, PROTHONOTARY OFFICE TO STEVEN WOOD, DAG RE: NOTICE OF FILING OF PRO SE MOTION FOR POSTCONVICTION RELIEF. ATTACHED: COPY OF MOTION.	
127	11/05/2004		COOCH RICHARD R.
		ORDER OF BRIEFING THIS 5TH DAY OF NOVEMBER, 2004, THE DEFENDANT HAVING FILED A MOTION	



SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 13

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963

AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		FOR POSTCONVICTION RELIEF AND ACCOMPANYING MEMORANDUM IN SUPPORT THERE OF PURSUANT TO SUPERIOR COURT CRIMINAL RULE 61 ON OCTOBER 29, 2004; IT IS ORDERED THAT: 1) DEFENDANT'S PRIOR COUNSEL J. DALLAS WINSLOW, JR., ESQUIRE, SHALL FILE AN AFFIDAVIT WITH THE PROTHONOTARY RESPONDING REGARDING THE FACTUAL ALLEGATIONS OF THE INEFFECTIVE-ASSISTANCE-OF COUNSEL CLAIM(S) PURSUANT TO RULE 61(G)(2) ON OR BEFORE DECEMBER 6, 2005, SERVING THE AFFIDAVIT ON THE STATE AND ON THE MOVANT. 2) THE DEPARTMENT OF JUSTICE SHALL FILE A LEGAL MEMORANDUM WITH THE PROTHONOTARY IN RESPONSE TO THE MOTION, TAKING INTO ACCOUNT THE FACTUAL ASSERTIONS IN BOTH THE MOTION AND TRIAL COUNSEL'S RESPONSE ON OR BEFORE JANUARY 7, 2005. 3) ANY REPLY BY THE MOVANT SHALL BE FILED WITH THE PROTHONOTARY BY FEBRUARY 7, 2005.	
125	11/18/2004	DEFENDANT'S LETTER FILED. RE: RULE 61. MR. WASHINGTON INFORMS THE COURT THAT THE ORIGINAL BRIEFING SCHEDULE INDICATES THAT AN INCORRECT RESPONSE DATE.	
126	11/18/2004	AMENDED ORDER OF BRIEFING: THIS 5TH DAY OF NOV, 2004 THE DEFENDATN HAV HAVING FILED A MOTION FOR POSTCONVICTION RELIEF AND ACCOMPANYING MEMORANDUM IN SUPPORT THEREOF PURSUANT TO SUPERIOR COURT CRIMINAL TLE 61 ON OCT 29, 2004: IT IS ORDERED THAT: (1) DEFENDANT'S PRIOR COUNSEL J. DALLA WINSLOW, JR., ESQ, SHALL FILE AN AFFIDAVIT WITH THE PROTHONOTARY RESPONDING REGARDING THE FACTUAL ALLEGATIONS OF THE INEFFECTIVE-ASSISTANCE OF COUNSEL CLAIM(S) PURSUANT TO RULE 61 (G)(2) ON OR BEOFRE DEC. 6, 04 SERVING THE AFFIDAVIT ON THE STATE AND ON THE MOVANT. (2) THE DEPT. OF JUSTICE SHALL FILE A LEGAL MEMORANDUM WITH THE PROTHONOTARY IN RESPONSE TO THE MOTION, TAKING INTO ACCOUNT THE FACTUAL ASSERTIONS IN BOTH THE MOTION AND TRIAL COUNSEL'S RESPONSE ON OR BEFORE JAN. 7, 05. (3) ANY REPLY BY THE MOVANT SHALL BE FILED WITH THE PROTHONOTARY BY FEB. 7, 2005	COOCH RICHARD R.
128	12/21/2004	MOTION OF DEFAULT JUDGEMENT (PRO SE) FILED. REFERRED TO JUDGE COOCH	
129	12/27/2004	LETTER FROM JUDGE COOCH TO J. DALLAS WINSLOW, ESQ. AS I BELIEVE YOU ARE AWARE, DEFENDANT KEVIN WASHINGTON HAS FILED A MOTION FOR POSTCONVICTION RELIEF. I HAD ASKED FOR A RESPONSE OF AFFIDAVIT TO BE FILED BY YOU BY NOVEMBER 5. I DO UNDERSTAND THAT YOU HAVE HAD SOME DISCUSSIONS WITH MY SECRETARY ADVISING HER OF SOME DIFFICULTIES IN ACCESSING THE FILE, ETC., PARTICULARLY IN LIGHT OF	



SUPERIOR COURT CRIMINAL DOCKET  
( as of 02/08/2005 )

Page 14

State of Delaware v. KEVIN L WASHINGTON  
 State's Atty: ROBERT M GOFF , Esq.  
 Defense Atty: JOSEPH A GABAY , Esq.

DOB: 02/21/1963  
 AKA: KEVIN WASHINGTON  
 KEVIN WASHINGTON

No.	Event Date	Event	Judge
		YOUR HAVING LEFT THE OFFICE OF THE PUBLIC DEFENDER. A RESPONSIVE OF AFFIDAVIT BY YOU IS NEEDED AND MUST BE FILED ON OR BEFORE JANUARY 7. FOR YOUR INFORMATION, I ENCLOSE A COPY OF AN UNDATED "MOTION OF DEFAULT JUDGMENT" FILED ON DECEMBER 21, 2004 BY THE DEFENDANT WITH THE PROTHONOTARY RELATING TO THE FACT THAT YOUR AFFIDAVIT HAS NOT YET BEEN FILED. RRC	
130	01/05/2005	DEFENDANT'S LETTER FILED.TO JUDGE VAUGHN IN REFERENCE TO DEFENDANT'S MOTION FOR POSTCONVICTION RELIEF. REFERRED TO JUDGE VAUGHN	
131	01/28/2005	LETTER/ORDER ISSUED BY JUDGE COOCH TO COUNSEL THE COURT RECEIVED MR. WINSLOW'S AFFIDAVIT ON 1/21/05. ALTHOUGH, MR. WASHINGTON IS NOTED AS BEING COPIED ON MR. WINSLOW'S TRANSMITTAL, A COPY OF MR. WINSLOW'S LETTER TO THE COURT OF 1/21/05 AND HIS AFFIDAVIT IS ADDITIONALLY ENCLOSED FOR BOTH OF YOU. THE REVISED BRIEFING SCHEDULE IS NOW AS FOLLOWS: STATE'S RESPONSE SHALL BE DUE ON OR BEFORE 2/25/05, ANY REPLY BY KEVIN WASHINGTON SHALL BE FILED BY 3/25/05 IT IS SO ORDERED, JUDGE COOCH	COOCH RICHARD R.
132	01/28/2005	AFFIDAVIT OF DALLAS WINSLOW	

\*\*\* END OF DOCKET LISTING AS OF 02/08/2005 \*\*\*  
 PRINTED BY: CSCACOL

1 NO. VICTS 1		3 REPORT DATE 2-27-95		4 DEPARTMENT WILMINGTON P.D.		5 PAGE 1 of 3		6 COMPLAINT NO. 95-4862	
7 NAME (LAST, FIRST, MIDDLE) BATTLES, TIERRA L.				8 RACE, SEX, EQ. AGE BFN 8		9 DOB 4-3-87		10 RESID PHONE 762-6452	
12 ADDRESS 829 E 26 <sup>th</sup> ST				13 RESIDENT <input checked="" type="checkbox"/> RUL <input type="checkbox"/> NON <input type="checkbox"/> UNK		14 EMPLOYER/SCHOOL Ford Elementary			
15 LOCATION OF INCIDENT #12				16 GRID		17 SECT 13		18 CTY 14A	
22 REPORTED DAY DATE TIME Mo 2-27-95 2110				23 OCCURRED DAY DATE TIME Pending				24 INVOLVEMENT <input type="checkbox"/> ALCOHOL <input type="checkbox"/> DRUGS <input type="checkbox"/> COMPUTER	
25 CRIME OR INCIDENT TITLE & SECTION Miscellaneous Incident				26 UCR CLASS		27 SUP CODE		28 CRIM ACTIVITY	
29 4-F-14 SENT DATE <input type="checkbox"/> YES <input type="checkbox"/> NO				30 GA. <input type="checkbox"/> YES <input type="checkbox"/> NO		31 POINT OF ENTRY Ya		32 NATURE OF INJURIES Pending	
						33 WEAPONS MEANS/ATTACK Pending			
INDICATE RELATIONSHIP TO INVESTIGATION: W-1, W-2 WITNESS, NI, NOT INTERVIEWED, RP REPORTING PERSON, P PARENT									
CODE		34 NAME (L, FM) P-1 Washington, Cynthia BF-28				ADDRESS #12		PHONE #10	
		P-1 Reed, DE				96 WILMINGTON Hospital			
		W-1 Washington, Kevin Jr (3-20-89)				#12		#10	
33 EVID <input type="checkbox"/> YES <input type="checkbox"/> NO		PERFORMED BY Pending				TYPE			
36 METHOD OF OPERATION Suspect put his penis in victim's mouth and VAGINAE AREA									
37-1 <input checked="" type="checkbox"/> SUSPECT <input type="checkbox"/> DEFENDANT (L, FM) Washington, Kevin		37-2 TYPE ARREST <input type="checkbox"/> ON VIEW <input type="checkbox"/> SUMMONED WARRANT		37-3 VQ		37-4 RACE, SEX, EQ. AGE BNN 31		37-5 DOB 2-21-63	
37-6 RESIDENT <input checked="" type="checkbox"/> RUL <input type="checkbox"/> NON <input type="checkbox"/> UNK		37-7 ADDRESS LKA - #12 - Present Border Hill		37-8 DESCRIPTION IN CUSTODY		37-9 ARMED WITH KNIFE			
38-1 <input type="checkbox"/> SUSPECT <input type="checkbox"/> DEFENDANT		38-2 TYPE ARREST <input type="checkbox"/> ON VIEW <input type="checkbox"/> SUMMONED WARRANT		38-3 VQ		38-4 RACE, SEX, EQ. AGE		38-5 DOB	
38-6 RESIDENT <input type="checkbox"/> RUL <input type="checkbox"/> NON <input type="checkbox"/> UNK		38-7 ADDRESS		38-8 DESCRIPTION		38-9 ARMED WITH			
39 SUSP VEH REG # STATE YEAR MAKE MODEL BODY COLOR(S) IDENTIFYING CHARACTERISTICS									
40 CODE PROPERTY TYPE STOLEN - S, DAMAGED - D, RECOVERED - R, SEIZED - T TYPE LD. NUMBER VALUE									
40-1									
40-2									
40-3									
40-4									
40-5									
41 DRUG TYPE		42 DRUG QUANTITY		43 DRUG MEASURE		44 DATE RECOVER'D		45 VALUE DAMG	
						46 VALUE REC		47 VALUE STOLEN	
48 CONTINUATION OF ABOVE ITEMS W-2 - Kevin Washington (9-27-91) 829 E 26 <sup>th</sup> ST 762-6452									
14A - While working uniformed patrol this writer was dispatched to 829 E 26 <sup>th</sup> ST in regards to a possible sexual offense. Upon my arrival I spoke w/ Mrs. Cynthia Washington who related the following account.									
134 DOES VICT REQUEST NOTICE OF FUTURE PROCEEDINGS UPON ARREST <input type="checkbox"/> YES <input type="checkbox"/> NO				133 SUSPECTED BIAS/HATE INCIDENT <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		49 DET NOTIFIED		50 REFERRED TO	
52 REPORTING OFFICER Kelly E. Dwyer #16718				53 STATUS <input type="checkbox"/> UNFOUNDED <input type="checkbox"/> ARREST - JUV. <input type="checkbox"/> PENDING - ACTIVE <input type="checkbox"/> PEND - INACTIVE <input type="checkbox"/> ARREST - ADULT <input type="checkbox"/> SERVICE CLEAR		54 EXCEPTIONAL CLEAR <input type="checkbox"/> DEATH SUSPECT <input type="checkbox"/> NO V COOPERATION <input type="checkbox"/> PROSECUTION DECLINED <input type="checkbox"/> JUV NO CUSTODY <input type="checkbox"/> EXTRADITION DECLINED <input type="checkbox"/> ADMIN SANCTION		51 SUPERVISOR APPROVAL Kevin Washington	
55 SOLVABILITY FACTORS <input type="checkbox"/> SUSP. NAMED <input type="checkbox"/> SUSP. LOCATED <input type="checkbox"/> WIT <input type="checkbox"/> MO. <input type="checkbox"/> EVIDENCE <input type="checkbox"/> TRAC. STOLEN <input type="checkbox"/> SUSP. VEH. ID'ED <input type="checkbox"/> SUSP. DESCRIBED <input type="checkbox"/> SUSP. ID'ED									
57 OFFICE FOLLOW-UP CLOSE									



Page 5

Page 7

1 the end of the case will be the actual declarants  
 2 testifying. So they testify prior to the  
 3 cross-examination, but we don't have to cut in between  
 4 direct and cross.  
 5 THE COURT: That was done -- apparently it's  
 6 becoming more and more done -- in the most recent case  
 7 that I had. Smith says it has to be -- they have to  
 8 be introduced no later than the conclusion of the  
 9 direct examination of the out-of-court declarant.  
 10 Any objection to this procedure, Mr.  
 11 Winslow?  
 12 MR. WINSLOW: No, Your Honor.  
 13 THE COURT: I gather -- any objection on  
 14 voluntariness grounds to any of the out-of-court  
 15 statements?  
 16 Are you referring to the alleged victim?  
 17 MR. GOFF: Victim and mother of the victim  
 18 who received the first disclosure.  
 19 THE COURT: So I understand then the State  
 20 will introduce those out-of-court statements even  
 21 before the out-of-court declarant even begins to  
 22 testify.  
 23 MR. GOFF: Correct.

1 MR. GOFF: I don't know that he has.  
 2 MR. WINSLOW: Well --  
 3 THE COURT: I don't need to know.  
 4 MR. WINSLOW: I'm just kidding, Judge. I'm  
 5 going to give an opening statement. I'm going to  
 6 basically tell the jury that mother is the one putting  
 7 the daughter up to this, we believe, and this is not  
 8 true and that Mr. Washington certainly didn't do any  
 9 of the acts he is accused of.  
 10 THE COURT: All right. It will be in the  
 11 hands of the jury. Let's go in. I'll apologize for  
 12 the delay which was caused by my having to attend to  
 13 another matter in another case.  
 14 MR. WINSLOW: Do you care to have an office  
 15 conference with respect to instructions tomorrow  
 16 morning before the start of the trial, like at 9:30?  
 17 What I anticipate happening is we may finish  
 18 the testimony, except for the doctor, today. I'm  
 19 always optimistic. I sometimes, obviously, turn out  
 20 to be wrong, but if that does, in fact, happen, I  
 21 would be available.  
 22 THE COURT: All right.  
 23 MR. GOFF: I would be available, too.

Page 6

Page 8

1 THE COURT: And I gather that comes in  
 2 without objection.  
 3 MR. WINSLOW: That's correct.  
 4 THE COURT: I looked at Smith to see whether  
 5 there is any reason why that can't be done. And I  
 6 think it can be done, especially with the consent of  
 7 the defendant.  
 8 MR. GOFF: I think the language itself says  
 9 no later than. I think that language itself implies  
 10 it can be earlier than direct examination.  
 11 THE COURT: Anything else?  
 12 MR. WINSLOW: Judge, nothing, except for the  
 13 fact as far as jury instructions are concerned for  
 14 tomorrow, I have no special request. There is no --  
 15 it's not an alibi defense. So there is no -- nothing  
 16 to ask for special for instructions.  
 17 THE COURT: What is the defense, if you're  
 18 able to say? I don't want to ask you to tip your  
 19 hand.  
 20 MR. WINSLOW: You're not asking me to tip my  
 21 hand, but you want to know what the defense is?  
 22 THE COURT: If you already tipped it to Mr.  
 23 Goff.

1 THE COURT: Let's plan to have a prayer  
 2 conference at 9:30 tomorrow. Who knows? Maybe that  
 3 won't even be necessary if I can get the instructions  
 4 to you late this morning and you can look at them and  
 5 maybe give comments.  
 6 MR. WINSLOW: Just take your last trial's  
 7 instructions and dovetail them into this one.  
 8 THE COURT: Any rule except for the Lolly  
 9 instruction I gave in that case? That's another story  
 10 for another time.  
 11 Any 609 issues if the defendant takes the  
 12 stand?  
 13 MR. GOFF: You mean his prior record?  
 14 THE COURT: Yes.  
 15 MR. WINSLOW: Yes.  
 16 MR. GOFF: He has convictions for criminal  
 17 impersonation, two of them. He has a conviction for  
 18 forgery in the third degree, which is a crime of  
 19 dishonesty as well.  
 20 THE COURT: If --  
 21 MR. GOFF: I don't remember if he has a  
 22 felony charge.  
 23 MR. WINSLOW: He doesn't have a felony that



1                   ... ALLEN DeJONG, M.D.,  
2     having been duly sworn according to law, was examined  
3     and testified as follows...

4                   MR. GOFF: Good morning, ladies and gentlemen  
5     of the jury.

6                   THE JURY: Good morning.

7                   DIRECT EXAMINATION

8     BY MR. GOFF:

9                   Q. Good morning, Doctor.

10                  A. Good morning.

11                  Q. You work for the A.I. duPont Hospital, I  
12     guess, most of the time?

13                  A. Yes, that's true.

14                  Q. Okay. What do you do for the hospital?

15                  A. I am medical director of the Care Program,  
16     which is a child at risk evaluation program. This  
17     program essentially is to help evaluate physically and  
18     sexually abused and neglected children.

19                  Q. And you're a medical doctor, are you not?

20                  A. That's correct, I'm a pediatrician.

21                  Q. And do you have any speciality for your  
22     practice?

23                  A. Well, my speciality is the area of physical

DeJong, M.D. - Direct

25

1 and sexual abuse of children, although I am trained as  
2 a general pediatrician.

3 Q. And did you obtain -- if you could go through  
4 with us some of the education as well as training  
5 experience that you've had in your professional life.

6 A. I went to undergraduate school at Colgate  
7 University, then attended Cornell University Medical  
8 College, graduating with my M.D. degree in 1974.  
9 Following that I took the traditional three years of  
10 additional training to become a board-certified  
11 pediatrician. And that is a year of internship and  
12 two years of additional residency training. And that  
13 was at the University of Michigan Medical Center.

14 Following that, I elected to take one  
15 additional year of training called fellowship  
16 training. And that was in community and ambulatory  
17 pediatrics at the University of Rochester Medical  
18 Center. And following that I took my first real job  
19 at Jefferson Medical College, at Thomas Jefferson  
20 University Hospital in Philadelphia. And that was in  
21 1978.

22 Q. Okay. And during the course of your practice  
23 has your speciality or focus developed on evaluating

DeJong, M.D. - Direct

26

1 children for physical and sexual abuse?

2 A. Yes. Shortly after coming to Jefferson in  
3 1978 I began evaluating children for suspected sexual  
4 abuse. At that time Jefferson was one of the two  
5 hospitals in the city of Philadelphia that was  
6 evaluating both adult and child victims of suspected  
7 sexual abuse. By 1980 I had developed a special  
8 program for the evaluation of sexually abused children  
9 at Jefferson. I continue to do that, and continue to  
10 do that up to the present day.

11 However, Jefferson has affiliated with the  
12 duPont Hospital for Children. And in the past several  
13 years I've been spending increasing amounts of time  
14 doing the same type of job at duPont Hospital for  
15 Children. And as of a year ago I became a full-time  
16 employee at duPont Hospital for Children in the area  
17 of evaluation of physically and sexually abused  
18 children. I still go one day a week to Jefferson,  
19 continue my work in that area at Jefferson.

20 Q. Okay. And during the course of your career  
21 doing this specific type of treatment and diagnosis,  
22 have you had occasion to observe and diagnose children  
23 who have complained of histories of sexual abuse?



DeJong, M.D. - Direct

27

1 A. Yes, I have.

2 Q. Okay. And during the course of this time,  
3 how many children do you think you've actually seen in  
4 that regard?

5 A. At this point it's over 3,000 children.

6 Q. \* Have you also been called upon to review  
7 charts and cases of children seen by other doctors  
8 also presenting with histories of sexual abuse?

9 A. Yes, I have.

10 Q. And is that many times as well?

11 A. I would say that's in the hundreds. I'm not  
12 exactly sure of the number.

13 Q. I direct your attention back to March --  
14 well, I will direct yourself to the record of a March  
15 15, 1995 examination of one Tierra Battles, a then  
16 eight-year-old child. Have you had occasion to review  
17 the records of that examination?

18 A. Yes, I did.

19 Q. \* And with regard to that examination, she was  
20 examined specifically as to her genitalia, was she  
21 not?

22 A. Yes, she was.

23 Q. And, if you could, did you bring those

DeJong, M.D. - Direct

28

1 records with you here today?

2 A. I did bring a copy --

3 Q. Okay.

4 A. -- of the medical report.

5 Q. Now, with regard to that examination, were  
6 there any findings of any physical or specific  
7 physical abnormalities which are associated with  
8 sexual abuse?

9 A. There were no specific physical abnormalities  
10 which would be specific for her diagnostic of sexual  
11 abuse.

12 Q. Okay. What is noted specifically, if you  
13 could tell this jury, as to the examination?

14 A. Okay. Specifically as to the examination of  
15 the genital and anal areas, the genitalia, the labia  
16 have no injury or lesions. There is a minimal  
17 increased pigmentation and minimal rugae. Rugae is  
18 the folds. Normal clitoral hood. Urethral orifice,  
19 no inflammation. Hymenal orifice, approximately three  
20 to four millimeters in the knee-chest position. All  
21 edges smooth and glistening. No visual lesions or  
22 evident scars. There is no evidence of significant  
23 discharge or odor on today's examination. Anus, no

DeJong, M.D. - Direct

29

*abnormal structural change in the body  
due to injury or disease!*

1 evidence of lesions, comma, injury, nonpatulous,  
2 normal appearing tone.

3 Q. Okay. What does nonpatulous mean?

4 A. Nonpatulous means doesn't flop wide open,  
5 doesn't flop wide open spontaneously on itself.

6 Q. And before we move on, a slight increase in  
7 pigmentation, if you could, is that a normal variant  
8 that one might see?

9 A. Slight increased pigmentation can be a normal  
10 variant. Sometimes it's the result of some kind of  
11 irritation in the genital area, but that irritation  
12 can be often related to hygiene kind of issues, so to  
13 speak, not specific variants.

14 Q. So it can be as to hygiene or any kind of  
15 irritation?

16 A. Any kind of irritation.

17 Q. <sup>it's</sup> Sexual abuse type of irritation?

18 A. That could. Any kind of tearings, including  
19 sexual abuse, could cause it, but it's not specific  
20 for sexual abuse.

21 Q. I'm unfamiliar with the term "rugae, minimal  
22 rugae."

23 A. Rugae.



DeJong, M.D. - Direct

30

1 Q. Okay. Could you explain what that means with  
2 regard to, I guess, the front genitalia?

3 A. The rugae are simply folds or wrinkles. And  
4 folds or wrinkles in the skin over the genital area  
5 can be, again, a normal variation, sometimes  
6 relatively smooth, sometimes little folds or wrinkles.

7 Q. And that is a normal variation that's  
8 non-specific as to anything?

9 A. Normal variation.

10 Q. Okay. Now, this is an eight-year-old girl,  
11 Doctor. I assume that you have had occasion to  
12 examine many eight-year-old girls' genital area  
13 because of the nature of your practice?

14 A. Yes.

15 Q. Okay. If you could describe to the jury the  
16 anatomy, I guess it is, of the genitalia, moving from  
17 the outside, I guess, inward into the body, and  
18 describe that to the jury, please.

19 A. Okay. Sometimes the best way to think of it  
20 is think of it as if the structures are somewhat like  
21 a funnel. The bowl of the funnel extends downward,  
22 narrows at certain points and meets the neck of the  
23 funnel. Now, when we're talking about the bowl of the

DeJong, M.D. - Direct

31

1 funnel, the bowl of the funnel is created by the  
2 labia, the outer lips and the inner lips. And  
3 although it is a bowl, it is more of a bowl only when  
4 those lips are pulled apart and separated, it becomes  
5 a bowl-shaped depression. That bowl-shaped depression  
6 between the labia as they're separated is called the  
7 vaginal vestibule. Ultimately the labia go down, pull  
8 on them, they kind of fold together, and the bowl is a  
9 collapsible bowl, but it still becomes a bowl when you  
10 stretch it apart. So the rim of the bowl is created  
11 by the labia.

12 At the top end, towards the belly button, is  
13 where the clitoris and clitoral hood is. At the  
14 bottom, where the labia come together, we often call  
15 that the posterior fourchette or posterior  
16 commissure. So there's the bowl structures, and the  
17 bowl itself is called the vaginal vestibule. Now, at  
18 the bottom of the bowl where it narrows down is  
19 actually where the hymen is. And the hymen is simply  
20 a small piece of tissue that partially covers the  
21 opening from that vaginal vestibule into the vaginal  
22 canal.

23 The vaginal canal becomes the neck of the

DeJong, M.D. - Direct

(32)

1 funnel. So, to review again, there's the bowl which  
2 is created by essentially the walls of the labia, the  
3 bowl itself, the space is called the vaginal  
4 vestibule. Where it narrows down at the bottom it has  
5 this partial covering called the hymen. At the  
6 narrowest point where it meets the neck of the funnel  
7 is the vaginal canal.

8 Q. Okay. So what we're describing here is a  
9 three-dimensional progression, I guess, from the  
10 opening at the outer lips through the inner lips, or  
11 the labia minora, into this bowl, as it were, and then  
12 you proceed, at the end of the neck is the hymen?

13 A. At the outer end, outer end of the neck, more  
14 external toward the surface is where the hymen is, and  
15 it extends. And from the hymen deep into the body  
16 extends the vaginal canal.

17 Q. So it's like a tube and then something  
18 opening up a little bit at the end of that tube?

19 A. Well, actually, the more open space is the  
20 external space. The bowl of the funnel is the more  
21 open space. It does narrow down at the very neck of  
22 the funnel to the narrowest point, and it opens up  
23 slightly into the neck of the vaginal canal, but



DeJong, M.D. - Direct

34

1 area?

2 A. Based on the medical record, what is  
3 documented in the medical record itself is that she  
4 had relayed that her father had put a part of his body  
5 inside her, inside her bottom. And that's what's  
6 documented in the medical record.

7 Q. Okay. If I were to present to you a  
8 hypothetical situation where a child of eight had  
9 stated that her father had placed his penis or private  
10 part penetrating or into her private part, would that  
11 be consistent or inconsistent with the examination  
12 presented on March 15 of '95?

13 A. That would be consistent with the physical  
14 examination.

15 Q. How could that be consistent if there's no  
16 specific findings as to damage to the genitalia of  
17 that child?

18 A. Well, it can be consistent, because when you  
19 say inside, inside for the child is somewhere between  
20 the labia or somewhere deep to the surface of the  
21 labia. And, as I explained before, the areas between  
22 the labia, the vaginal vestibule is a fairly large  
23 sized opening. And putting an object in that large

DeJong, M.D. - Direct

35

1 opening doesn't necessarily have to create damage.  
2 The deeper one goes, when it gets down towards the  
3 more narrow part, such as the hymen and the vaginal  
4 canal, there still is a certain amount of flexibility  
5 to those structures. But since they are more narrow,  
6 the deeper the penetration, the more likely there is  
7 to be significant damage.

8 Q. In your experience and in your practice and  
9 having examined all these children, these female  
10 children, is it uncommon for a child to present with a  
11 history of vaginal penetration and present with no  
12 specific findings of abuse?

13 A. It's quite common to find that the children  
14 who present exactly with that history have no specific  
15 physical findings.

16 Q. Now, with regard to the anal examination,  
17 again, there was really no specific findings; is that  
18 correct?

19 A. That's right, there are no specific physical  
20 findings.

21 Q. Can you state with there being anal  
22 penetration by an adult male at some level whether it  
23 is possible to have no specific findings there?


DeJong, M.D. - Direct

36

1           A.     That certainly is possible to have no  
2     specific findings there. The anal opening is even  
3     more flexible than the vaginal vestibule would be.  
4     And it has to be very, very flexible so that bowel  
5     movements can pass out of the anal opening and yet be  
6     flexible enough to clamp down and not let anal  
7     contents simply run out. So there's a lot of  
8     stretchability and flexibility and adaptability to  
9     being tightly closed when it needs to be and being  
10    wide open when it also needs to be wide open. So that  
11    nature of the flexibility allows penetration to occur  
12    without necessarily causing any permanent damage.

13           Q.     With regard to both the anal area and with  
14    regard to, I guess, hymenal and other damages to the  
15    genital area of a child, could you please discuss for  
16    the jury the effect of a, perhaps, late report or the  
17    passage of time between actual sexual molestation and  
18    observation by a physician?

19           A.     Yes. Most of the injuries we see in sexual  
20    abuse are injuries that we see immediately are acute  
21    injuries. And by "acute injuries" I mean things such  
22    as bruising, swelling, surface scrapes or surface  
23    lacerations or tears. And all of these kinds of



A - 221

DeJong, M.D. - Direct

37

1 things can heal very rapidly.

2 In fact, in examining children, sometimes  
3 even as little as 48 hours between seeing an acute  
4 abrasion or laceration in this area and then seeing  
5 them 48 hours later, that laceration or surface  
6 abrasion may disappear into a little bit of redness.  
7 And a little bit of redness is something that we see  
8 fairly common in the genital area of children. So  
9 there's minor injuries that can heal very, very  
10 rapidly and certainly would be completely gone without  
11 any scarring within a period of a week to two weeks.

12 Q. Okay. So injuries to these areas occur  
13 without scarring on a frequent basis?

14 A. That is correct.

15 Q. And because they're children, they heal  
16 quickly, it sounds?

17 A. They heal quickly because they're children,  
18 in part. But also injuries in certain areas of the  
19 body tend to heal more quickly than in other areas of  
20 the body. Areas of the body that have the best blood  
21 supply heal more quickly than areas that have  
22 relatively poor blood supply. Therefore, areas of the  
23 body such as the genital area and the anal area



DeJong, M.D. - Direct

38

1 actually heal faster because they have a very rich  
2 blood supply compared to some other parts of the  
3 body, such as the tip of the finger or the tip of the  
4 toe.

5 Q. So, I guess the history presented both by  
6 this report and also as we've discussed here in court,  
7 is consistent with the evaluation?

8 A. That's correct.

9 Q. And it's also, on the other side of it,  
10 however, the examination is also consistent with there  
11 being no sexual abuse. Is that fair to say?

12 A. In the absence of a history of sexual abuse,  
13 this child has a normal or a variation of normal as  
14 far as her genital and anal examination, and therefore  
15 could be consistent with sexual abuse not having  
16 occurred.

17 MR. GOFF: Thank you, Doctor. I have no  
18 further questions. I imagine Mr. Winslow may.

19 THE COURT: Mr. Winslow, you may  
20 cross-examine.

21 MR. WINSLOW: Thank you very much, your  
22 Honor.

23

DeJong, M.D. - Cross

39

CROSS-EXAMINATION

BY MR. WINSLOW:

Q. Good morning, Doctor.

A. Good morning.

Q. Doctor, assuming that all the facts you already have in your brain happened, let's also add to that the fact that there's been some testimony in this matter that the man in question got on top of the eight-year-old and went up and down. From that I think one could infer that there was some physical movement or action that caused some force downward in the vaginal area. Would that increase or decrease the chances for some physical findings in the genitalia?

A. It would depend on what the up and down motion actually was and how the penis was being moved in those particular structures.

Q. Let's assume for the sake of our discussion here today that the penis had penetrated the vagina and was inside the labia for purposes of this discussion.

A. Inside the labia --

Q. It was an erection, as well.

A. Erect penis inside the labia. It would

DeJong, M.D. - Cross


40

1 depend on whether the penis was inside the labia, so  
2 that the side of the shaft of the penis was rubbing in  
3 between the labia parallel to the surface of the skin,  
4 or whether it was perpendicular to the surface of the  
5 skin between the labia, and the point was being thrust  
6 deeply into the vaginal area.

7 The movement up and down could simply be the  
8 side of the shaft of the penis rubbing between the  
9 labia in the vaginal vestibule inside the labia. But  
10 that would not reach down to the level of the narrow  
11 structures, the hymen and the vaginal canal. If the  
12 point of that penis were directed perpendicular to the  
13 surface of the skin directed more deeply and through  
14 the hymen, there certainly is a higher chance of both  
15 acute injury and lasting injury.

16 Q. Doctor, just for our knowledge, what's the  
17 distance approximately in an eight-year old girl from  
18 the outer limits of the labia to the hymen?

19 A. It's somewhat variable. And it sometimes  
20 depends on just some general physical differences in  
21 people. It also depends on how heavy or relatively  
22 thin the child is. But in a child of this age it  
23 would probably be somewhere between three quarters of



DeJong, M.D. - Cross

41

1 an inch to an inch and a half, maybe an inch and three  
2 quarters from the very surface of the labia.

3 Q. And do you have any present recollection as  
4 to the young girl in question?

5 A. I did not examine this particular child.

6 Q. Well, I can't recognize the doctor's  
7 signature at the bottom of the page, so I thought it  
8 was yours, but obviously I'm mistaken. But as far as  
9 the record is concerned, was the patient calm,  
10 nervous? What was the status of the patient?

11 A. What's written in the examination in the  
12 record by Dr. Katz, who did the examination, on exam,  
13 quiet and serious appearing girl. Answers questions  
14 clearly but not volunteering information. That is the  
15 description of her.

16 Q. And who is present, if anybody, with the  
17 young lady involved?

18 A. There's not a notation on Dr. Katz'  
19 physical --

20 Q. Do you have the social worker addendum?

21 A. I do have the social worker addendum which  
22 does describe that the mother of the child and Diane  
23 Necastro, who is one of the social workers at duPont



DeJong, M.D. - Cross

42

1 Hospital, were present in the room while the  
2 examination was being done.

3 Q. Let me direct your attention to what appears  
4 to be the first, second, third full paragraph on that  
5 page, beginning with the words or letters "PT," which  
6 I'm sure is abbreviated for patient.

7 A. Correct.

8 Q. And ask you whether or not the mother was  
9 supportive of the patient?

10 A. Yes. "Mother is supportive with patient and  
11 obviously offers her encouragement in terms of  
12 suggesting patient speak for herself."

13 Q. And the last paragraph on the observations as  
14 to the status, my knowledge of patient and mother when  
15 the examination was over probably pretty commonly feel  
16 this way?

17 A. "At the end of visit mother and patient  
18 seemed to be relieved that it was completed and had it  
19 behind them."

20 MR. WINSLOW: Thank you very much.

21 THE COURT: Redirect examination, Mr. Goff.

22 MR. GOFF: Your Honor, I think it's perhaps  
23 appropriate, if I may...

1 (Counsel confer.)

2 MR. WINSLOW: Judge, I just wanted to read  
3 this before I respond to Mr. Goff's question.

4 THE COURT: Take what time you need.

5 MR. WINSLOW: Frankly, I've read it once  
6 already, but I just wanted to double-check.

7 THE COURT: May I see the bailiff, please?

8 MR. GOFF: Your Honor, I believe counsel has  
9 agreed to allow the records of Dr. Katz' examination,  
10 as well as the social worker Diane Necastro's notes of  
11 this business to be introduced. So I'm moving it in  
12 as the next State's Exhibit.

13 THE COURT: Without objection it will be  
14 admitted as the next State's Exhibit.

15 THE CLERK: Marked State's Exhibit 6, your  
16 Honor.

17 MR. GOFF: In view of that, your Honor, I  
18 have no further questions of this witness. I ask that  
19 he be permitted to be excused.

20 MR. WINSLOW: No objection, your Honor.

21 THE COURT: You're excused from further  
22 testimony in this trial.

23 THE WITNESS: Thank you, your Honor.

trial.

Rule 16(a) (1) (C): Documents and Tangible Objects.

Inspection of documents and tangible objects will be permitted upon reasonable notice and during normal business hours. Please contact my office to arrange for a mutually convenient time for inspection.

Rule 16(a) (1) (D): Reports of Examinations and Tests.

Results or reports of mental or physical examinations and scientific tests or experiments which the State intends to use during its case-in-chief, or material to the defense:

Are enclosed.

Rule 16(a) (1) (E) Expert Witnesses.

The identity and substance of the opinions of expert witnesses:

None at this time.

Please be advised that this response, together with any acknowledgements of information to be supplied when received, constitute the State's entire response to its discovery obligations under Rule 16 and/or any written request filed by the defendant. If, prior to or during trial additional evidence or material is discovered which is subject to discovery - except to the extent referred to herein - is objected to as being outside the scope of the State's obligation under Rule 16. Should you wish to pursue the matter further, please file a motion to compel further response as provided by Rule 16.

State's Reciprocal Discovery Request:

Pursuant to Superior Court Criminal Rule 16(b), please provide me with the following:

An opportunity to inspect and copy or photograph any books, papers, documents, photographs, tangible objects, or copies or portions thereof, which are within the possession, custody or control of the defendant, which the defendant intends to introduce as evidence in chief at the trial.

An opportunity to inspect and copy or photograph any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof within the possession or control of the defendant, which the defendant intends to introduce as evidence in chief at trial or which were prepared by a witness whom the defendant intends to call at the trial when the results or reports relate to that

1 be difficult.

2 THE COURT: Well, that's true. Why don't you  
3 just cut up the label with a piece of scissors, write  
4 in the tiniest possible handwriting "State's Exhibit  
5 No. 1." And it doesn't have to be the full sticker  
6 size, half an inch by three quarters of an inch.

7 MR. GOFF: Actually, I think it might be  
8 No. 7, because I think that's what the old one was.

9 THE CLERK: The older tape was the audiotape  
10 of the victim.

11 MR. GOFF: Never mind, your Honor, it's  
12 correct.

13 THE COURT: Mr. Winslow.

14 MR. WINSLOW: Judge, with respect to the  
15 instructions to the jury, after having heard  
16 Ms. Battles testify, it seems to me that it would be  
17 appropriate for me to ask that the Court also give a  
18 lesser included for Counts Nos. I and III, based upon  
19 the following rational: First, the alleged victim  
20 does not recall the so-called butt incident, or Count  
21 No. III. So that I think it would be appropriate for  
22 me to argue that, number one, that did not occur, or,  
23 secondly, there was no penetration, maybe only



1 contact.

2 With Count No. I, the testimony from the  
3 alleged victim was that she was penetrated a tiny  
4 bit. And she denied that she would have been mistaken  
5 about that. But I do believe that argument would be  
6 appropriate that she could have been mistaken in her  
7 age and her ability to recollect the event, which does  
8 not appear to be very strong. So those are my two  
9 requests.

10 THE COURT: Let me make sure I understand.  
11 Count III is a question -- let me hear the State's  
12 position for an instruction on the lesser-included  
13 offense of --

14 MR. WINSLOW: Unlawful sexual contact.

15 THE COURT: Second degree.

16 MR. GOFF: Would have to be second degree,  
17 your Honor.

18 THE COURT: And as to Count I, the request is  
19 for a lesser-included offense of, again, what,  
20 Mr. Winslow?

21 MR. WINSLOW: Unlawful sexual contact second,  
22 your Honor.

23 THE COURT: Any further requests about

1 lesser-includes on any charge, Mr. Winslow? And I'll  
2 get the State's position.

3 The State's position, then, Mr. Goff?

4 MR. GOFF: I'd like to say no, but I can't,  
5 for the life of me, think of a reason why. I guess  
6 it's possible that under some rationale a jury might  
7 find the contact as opposed to penetration. So I'm  
8 not going to object to either one of those two  
9 lesser-included offenses.

10 THE COURT: I will include them. I think a  
11 fair argument can be made that there's a, quote,  
12 rational basis in the evidence, unquote, for the  
13 lesser-includes. That's the standard under 206, so  
14 I'll give them.

15 Any other things to take up before we  
16 recess? May I see counsel at sidebar on scheduling.

17 Anything else to take up before we meet --

18 MR. WINSLOW: Does Court just recess and meet  
19 in the robing room for scheduling purposes?

20 THE COURT: If I can just talk to you for one  
21 moment here.

22 (A sidebar, without stenographer, was held.)

23 THE COURT: Just so other persons know, the

Certificate of Service

I, KEVIN C. WASHINGTON, hereby certify that I have served a true  
and correct cop(ies) of the attached: Habeas corpus / Appendix  
\_\_\_\_\_ upon the following  
parties/person (s):

TO: Warden Thomas Carrell  
Delaware Correctional Center  
Smyrna, Delaware 19977  
\_\_\_\_\_  
\_\_\_\_\_

TO: Attorney General  
M. Jane Brady  
Carrel State office bldg.  
820. N. French street  
Wilmington, DE 19801

TO: United States District  
Court  
\_\_\_\_\_  
\_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

844 N. King street lockbox 18  
Wilmington, Delaware 19801  
\_\_\_\_\_  
\_\_\_\_\_

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United  
States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE  
19977.

On this 28 day of November, 2005  
\_\_\_\_\_

Certificate of Service

I, Kevin L. Washington, hereby certify that I have served a true  
and correct cop(ies) of the attached: Habeas corpus/Appendix  
\_\_\_\_\_ upon the following  
parties/person (s):

TO: Warden Thomas Carroll  
Delaware Correctional Center  
Smyrna, Delaware 19777  
\_\_\_\_\_  
\_\_\_\_\_

TO: Attorney General  
M. Jane Brady  
Carvel State Office Bldg.  
820. N. French Street  
Wilmington, DE 19801

TO: United States District  
Court  
\_\_\_\_\_  
844 N. King Street Lockbox 18  
Wilmington, Delaware 19801  
\_\_\_\_\_  
\_\_\_\_\_

TO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

BY PLACING SAME IN A SEALED ENVELOPE and depositing same in the United States Mail at the Delaware Correctional Center, 1181 Paddock Road, Smyrna, DE 19777.

On this 28 day of November, 2005  
\_\_\_\_\_